

IN THE SUPERIOR COURT OF COBB COUNTY

STATE OF GEORGIA

COBB COUNTY, GA  
FILED IN OFFICE

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*[Signature]*  
COBB SUPERIOR COURT CLERK

THE GOVERNORS RIDGE OFFICE  
PARK ASSOCIATION, INC., EXECUTIVE  
DATA SYSTEMS, INC., GOVERNORS  
RIDGE, LLC, KOA PROPERTIES,  
LLC, and PORTFOLIO PROPERTIES,

Plaintiffs

v.

DANIEL E. MCBRAYER, SR., ALPHA OB  
GYN GROUP, PC and  
THE MCBRAYER FAMILY LIMITED  
PARTNERSHIP

Defendants.

Civil Action File No. 13-1-8386-99

COMPLAINT

COME NOW, THE GOVERNORS RIDGE OFFICE PARK ASSOCIATION, INC. (sometimes, "GROPA"), EXECUTIVE DATA SYSTEMS, INC. (sometimes, "EDS"), GOVERNORS RIDGE, LLC (sometimes, GR"), KOA PROPERTIES, LLC (sometimes, "KOA"), and PORTFOLIO PROPERTIES (sometimes, "PORTFOLIO"), and respectfully state the following as their Complaint against the Defendants, ALPHA OB GYN GROUP, PC ("ALPHA OB"), DANIEL E. MCBRAYER, SR. (sometimes, "MCBRAYER" or "DR. MCBRAYER") and THE MCBRAYER FAMILY LIMITED PARTNERSHIP, a Georgia limited partnership (sometimes, the "MCBRAYER PARTNERSHIP"):

BACKGROUND

1.

Plaintiff **GROPA** is a not-for-profit organization of owners of buildings in an office park located at 1640 Powers Ferry Road, Marietta, Cobb County Georgia commonly known as “Governor’s Ridge Office Park,” (“Governors Ridge”) formed and in good standing under the Nonprofit Corporation Code and all laws of Georgia.

2.

Plaintiff **EXECUTIVE DATA SYSTEMS, INC.**, a Georgia corporation, is the owner of certain buildings in Governors Ridge commonly known as Buildings 14, 21, 27, 29 and 30.

3.

Plaintiff **GOVERNORS RIDGE, LLC**, a Georgia limited liability company, is the owner of a certain building in Governors Ridge commonly known as Building 22.

4.

Plaintiff **KOA PROPERTIES, LLC**, a Georgia limited liability company, is the owner of that certain building in Governors Ridge commonly known as Building 24.

5.

Plaintiff **PORTFOLIO PROPERTIES**, a Georgia general partnership, is the owner of those certain buildings in Governors Ridge commonly known as Buildings 1 and 7.

6.

Defendant **DANIEL E. (ENOCH) MCBRAYER** resides at **4567 Woodlawn Gates Lane, Marietta, Cobb County, Georgia 30068** and may be served at that address. **MCBRAYER** is subject to the jurisdiction of this court and venue is proper in this forum.

7.

**MCBRAYER** was at material times relevant to this suit an occupier of an improved lot in Governors Ridge Office Park, commonly known as “Building 23,” (sometimes, the

“Subject Property”) from which he operates, using the fictitious names, “Alpha-Group” or sometimes, “Alpha O/B GYN Group, P.C.” a “women’s healthcare” medical clinic specializing in terminating human pregnancies.

8.

Defendant **ALPHA OB GYN GROUP, P.C.** (sometimes, “**ALPHA OB**”) is a Georgia professional corporation and was at all relevant times hereto an occupier of Building 23, Governors Ridge. On information and belief, **DR. MCBRAYER** is both chief executive officer (“CEO”), and chief medical officer of **ALPHA OB**.

9.

**ALPHA OB** is subject to the personal jurisdiction of this court and may be served by serving its registered agent for service of process, Ms. Sheila Bynum, at the Subject Property, **1640 Powers Ferry Road, Marietta, Cobb County, Georgia 30067**. Venue is proper in this forum.

10.

Defendant **THE MCBRAYER FAMILY LIMITED PARTNERSHIP** (sometimes, the “**MCBRAYER PARTNERSHIP**”) is and was at all relevant times hereto the owner of Building 23, Governors Ridge. On information and belief, **DR. MCBRAYER** is both chief executive officer (“CEO”), and a general and a limited partner of the **MCBRAYER PARTNERSHIP**, an entity organized for profit, which leases the Subject Property to **MCBRAYER** or **ALPHA OB**.

11.

The **MCBRAYER PARTNERSHIP** is subject to the personal jurisdiction of this court and may be served by serving its registered agent for service of process, Ms. Sheila

Bynum, at the Subject Property, **1640 Powers Ferry Road, Marietta, Cobb County, Georgia 30067**. Venue is proper in this forum.

12.

**MCBRAYER** bought or otherwise acquired the lot on which Building 23 is constructed on or about July 16, 1991.

13.

On or about December 4, 1995 **MCBRAYER** transferred the Subject Property to the **MCBRAYER PARTNERSHIP** then owned by himself and his ex-wife **CAMMIE EATON MCBRAYER**, as both the the general and the limited partners, valuing the Subject Property at Three Million (\$3,000,000) Dollars.

14.

At or around the time the Subject Property was transferred to the **MCBRAYER PARTNERSHIP**, **ALPHA OB** and/or **MCBRAYER** began conducting a medical practice, specializing in terminating human pregnancies, at the Subject Property during routine office and business hours Mondays through Saturdays.

15.

Thereafter, **ALPHA OB's** and/or **MCBRAYER'S** practice attracted a constant stream of "right to life" picketers and demonstrators who, at times, trespassed onto the common and private areas of Governors Ridge, at times loudly, bellicosely and threateningly accosted visitors and invitees of Governors Ridge, not limited to those coming into the office park to use the services of **ALPHA OB** and/or **MCBRAYER**, sometimes discouraging prospective visitors of other owners and tenants of Governors Ridge from entering into or returning to the park to conduct their lawful, privileged business.

16.

Those demonstrators also engaged in word of mouth campaigns to dissuade people from visiting the park and their activities created adverse publicity which cast an unfavorable light on the entire park. Those demonstrations and that adverse publicity continue up to the filing of this lawsuit and, the Plaintiffs expect, will continue beyond.

17.

On or around, May 23, 2012 a fire of highly suspicious origin was started in the premises of Building 23, during normal business hours. That suspected crime has caused tenants and owners of Governors Ridge to fear for their personal safety and that of their property.

18.

At least as early as March 2009 **MCBRAYER** was notified by the Board of GROPA, which is authorized to act in behalf of the owner members of the park, that **MCBRAYER'S** and/or **ALPHA OB'S** activities at the Subject Property were having a constant, material, adverse effect on the park, its owners, tenants and their guests and demanded that **ALPHA OB** and **MCBRAYER** eliminate the deleterious effects of their activities which **MCBRAYER** acknowledged his clinical activities directly caused.

19.

On or about November 10, 2009 following notice, the Board conducted a hearing, attended by **MCBRAYER** and his lawyers, to determine, among other things, whether **DR. MCBRAYER'S** and **ALPHA OB'S** actions formally constituted a private nuisance and whether they would abate the nuisance they created and whose effects and costs they callously imposed on the other owners, tenants and guests of the park.

20.

Following that hearing the Board, after considering the evidence and arguments of **ALPHA OB's** and **MCBRAYER'S** legal counsel, determined that the activities of **MCBRAYER** and **ALPHA OB** constituted a continuing private nuisance.

21.

The Board then sent **MCBRAYER, ALPHA OB** and the **MCBRAYER PARTNERSHIP** a letter demanding that they cease and desist from maintaining the nuisance they created and maintained, giving **DR MCBRAYER** a grace period until January 1, 2010 within which to abate that nuisance he created and maintained in conjunction with his limited partnership, the **MCBRAYER PARTNERSHIP, ALPHA OB** or both.

22.

**MCBRAYER, ALPHA OB** and the **MCBRAYER PARTNERSHIP** have deliberately flouted that demand of the Board and have consciously ignored all subsequent demands from the Board and its agents to abate the nuisance those defendants created and maintained, to the great injury of GROPA, the owners, tenants and invitees of them all.

#### **COUNT ONE**

#### **MONEY DAMAGES**

23.

GROPA realleges and repeats the foregoing paragraphs as though fully restated *verbatim* here again.

24.

One or more of the Plaintiffs has lost a prospective sale of a building in Governors Ridge as a direct, proximate result of the noxious, objectionable activities attracted by and

surrounding the activities of **ALPHA OB** and **DR MCBRAYER** conducted on the property owned by the **MCBRAYER PARTNERSHIP**.

25.

One or more of the Plaintiffs lost a prospective tenant of a building in Governors Ridge as a direct, proximate result of the objectionable, noxious activities attracted by and surrounding the activities of **ALPHA OB** and **DR MCBRAYER** conducted on the property owned by the **MCBRAYER PARTNERSHIP**.

26.

One or more of the Plaintiffs and other owners and occupiers of Governors Ridge have lost prospective clients and customers as a direct, proximate result of the objectionable, noxious activities attracted by and surrounding the activities of **DR MCBRAYER** and **ALPHA OB** conducted on the Subject Property owned by the **MCBRAYER PARTNERSHIP**.

27.

The Plaintiffs have suffered a drastic diminution in the values of their respective properties as a direct, proximate result of the medical activities of the Defendants.

28.

**MCBRAYER, ALPHA OB** and the **MCBRAYER PARTNERSHIP** are jointly and individually liable for all money damages suffered and incurred by the Plaintiffs in an exact amount to be proven at trial.

**COUNT TWO**

**INJUNCTION**

29.

GROPA realleges and repeats the foregoing paragraphs as though fully restated *verbatim* here again.

30.

The actions of **MCBRAYER, ALPHA OB** and the **MCBRAYER PARTNERSHIP** in creating and maintaining the continuing nuisance have caused and continue to cause and threaten to cause immediate irreparable injury to the owners and occupiers of Governors Ridge, for which there is no adequate remedy at law.

31.

Despite the repeated demands of **GROPA, MCBRAYER, ALPHA OB** and the **MCBRAYER PARTNERSHIP** openly, notoriously and with great indifference to the harm to their neighbors at Governors Ridge continue their activities directly contravening the will of the Board, substantially injuring the peaceful, quiet use and enjoyment of the park and threatening the personal safety and property of the owners and occupants thereof, and the Defendants have signaled their unequivocal intentions to continue those activities in the future.

32.

As a result, **GROPA** and the other plaintiffs are entitled to an order of this court requiring the defendants to abate the described continuing nuisance by, if necessary, permanently enjoining **ALPHA OB, MCBRAYER** and the **MCBRAYER PARTNERSHIP** from conducting any and all medical and ancillary procedures in or on the Subject Property which have as their intended result attracting female human patients for the purpose of terminating the pregnancy of any of those patients, in the absence of unforeseen dire medical



emergencies when no other medical facility reasonably might be utilized for life saving exigent measures.

### **COUNT THREE**

#### **ATTORNEY'S FEES**

33.

GROPA realleges and repeats the foregoing paragraphs as though fully restated *verbatim* here again.

34.

The actions of **MCBRAYER, ALPHA OB** and the **MCBRAYER PARTNERSHIP** in creating and maintaining the on-going private nuisance, flouting the wishes and legitimate fears and concerns of GROPA, the owners, occupiers and their invitees and prospective customers and clients constitute the intentional tort of a continuing nuisance.

35.

As a result, **MCBRAYER, ALPHA OB** and the **MCBRAYER PARTNERSHIP** are jointly and individually liable to the Plaintiffs for all their reasonable and necessary attorney's fees and litigation expenses, suffered and incurred in bringing, maintaining and concluding this lawsuit.

### **COUNT FOUR**

#### **PUNITIVE DAMAGES**

36.

GROPA realleges and repeats the foregoing paragraphs as though fully restated *verbatim* here again.

37.

The actions, failures and refusals to act on the part of **MCBRAYER, ALPHA OB** and the **MCBRAYER PARTNERSHIP** were taken and omitted deliberately, demonstrating their willful misconduct, malice, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to the consequences of their actions, failures and refusals to act.

38.

As a result, the Plaintiffs are entitled to exemplary damages to punish the obstreperous misconduct and to deter these Defendants from any such similar conduct in the future in an amount determined by the enlightened conscience of the trier of fact.

WHEREFORE Governors Ridge Office Park Association, Inc. and the other Plaintiffs request that this Honorable Court grant them:

- (a) Trial by a jury;
- (b) Judgment in their favor, and against the Defendants, jointly and individually, on all claims set forth herein;
- (c) Judgment in their favor, and against the Defendants, compelling them to abate the continuing nuisance by permanently enjoining them from maintaining the continuing nuisance described herein;
- (d) Judgment in their favor, and against the Defendants, jointly and individually, awarding the Plaintiffs punitive damages in an amount determined by the enlightened conscience of the trier of fact;

- (e) Judgment in their favor, and against the Defendants, jointly and individually, awarding the Plaintiffs all litigation costs, and expenses, including all its attorney's fees;
- (f) Judgment in their favor, and against the Defendants, jointly and individually casting all costs against the Defendants; and,
- (g) Such other and further relief as is appropriate in the circumstances.

By:   /5/    
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